

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

INDASIA GEWÜRZWERK GMBH,	:	APPEAL NO. C-160494 TRIAL NO. A-1407236
and	:	
INDASIA INTERNATIONAL AG,	:	<i>JUDGMENT ENTRY.</i>
Plaintiffs-Appellants,	:	
vs.	:	
INNOVATIVE FOOD TECHNOLOGIES, INC.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, plaintiffs-appellants Indasia appeal the trial court's verdict rendered in favor of Innovative Food Technologies, Inc., ("IFT") in a contract dispute. In two assignments of error, Indasia argues that a clause contained in an amendment it signed with IFT did not bar it from making a claim for unpaid invoices, and that the court erred in concluding the clause was clear and unambiguous. We disagree and affirm the judgment of the trial court.

In 2012, IFT entered into an "Exclusive Distributor Agreement" with Indasia for the purchase of spices, marinades, and other food-related products. Over the next two years, IFT alleged numerous problems with Indasia including delayed shipments, defective product, and incorrect product which cost IFT an additional \$450,000 in shipping costs. During this time, IFT did not pay Indasia for the product it received.

In September 2013, the parties met to resolve the issues between them. The parties executed an amendment to the agreement which included the following clause:

The Parties agree that neither party will initiate claims against the other based upon deliveries made prior to the effective date of this Agreement or corresponding outstanding receivables. Notwithstanding the foregoing, in the event either party hereto is named as a defendant, respondent, or otherwise has claims asserted against it, such party will not be deemed to have hereby waived, and such party hereby reserves, any [sic] all rights of setoff, defences [sic] and counterclaims, including, but not limited to those accruing or based upon events prior to the effective date of this proceeding.

In December 2014, Indasia filed a complaint for breach of contract alleging IFT had failed to pay for product it ordered. IFT argued that the September 2013 clause barred Indasia from bringing the claims because all of the invoices predated the September 2013 agreement. After a bench trial, the trial court found the claims clause was clear and unambiguous and barred Indasia from raising any claims against IFT for product it ordered prior to September 2013. Indasia appealed.

Contract interpretation is a matter of law, which courts review de novo. *Long Beach Assn., Inc. v. Jones*, 82 Ohio St.3d 574, 576, 697 N.E.2d 208 (1998). If the terms of the contract are clear and unambiguous, courts must give the words their plain and ordinary meaning and may not create a new contract by finding the parties intended something not set out in the contract. *Alexander v. Buckeye Pipe Line*, 53 Ohio St.2d 241, 246, 374 N.E.2d 146 (1978).

Indasia argued that the second sentence of the clause overrode the first and preserved Indasia's right to bring an action for the unpaid invoices prior to September

2013. We disagree and find that the trial court did not err in concluding the clause was clear and unambiguous. The first sentence prohibited each party from initiating a legal action against the other based on the previous transactions. The second sentence allowed each party to assert all claims previously waived if that party became a defendant or respondent in a future lawsuit. It did not override the first sentence. Therefore, Indasia could not bring claims for orders and deliveries prior to September 2013. Accordingly, we overrule the assignments of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and GORMAN, JJ.

ROBERT H. GORMAN, retired, from the First Appellate District, sitting by assignment.

To the clerk:

Enter upon the journal of the court on April 26, 2017
per order of the court _____.

Presiding Judge